

Public Prosecutor v Syarafi bin Abu

HIGH COURT (TAIPING) — NO 45D-01-12 OF 2013
MOHAMED ZAINI MAZLAN JC
8 NOVEMBER 2017

Criminal Law — Offences — Murder — Whether court could choose any preferred expert evidences — Whether death caused by accused or self-inflicted — Whether prosecution had proven case beyond reasonable doubt — Penal Code ss 300 & 302

Evidence — Expert evidence — Conflicting expert evidence — Accused charged with murder — Prosecution's expert witness opined another person had caused the wound on accused — Accused's expert witness opined that accused's wound was self-inflicted — Whether court could choose any preferred expert evidences

Twenty-year-old Nur Syuhada bt Johari ('the deceased') was found slumped against a black Proton Perdana at around noon, in the middle of the North–South highway at km228.2 in the district of Taiping, on the 2 February 2015. She was bleeding profusely from a stab wound to her throat and was barely alive then. She died from the wound soon after. Syarafi bin Abu ('the accused') was charged with the murder of the deceased under s 302 of the Penal Code ('the Penal Code'). The prosecution relied on the evidence of the forensic medical specialist, SP12 who had conducted autopsy on the deceased. SP12 concluded that another person had caused the wound, and that the stab pattern would have been different, had the deceased attempted to kill herself. In his defence, the accused claimed that the deceased took out a knife from a box in the car and initially attempted to kill herself. The accused claimed to have wrested the knife from the deceased, but that he was too late, as the deceased had managed to stab her own throat. The accused relied on the evidence of a retired senior consultant forensic pathologist, SD2 who opined that the accused's wound was self-inflicted.

Held, convicting and sentencing the accused to death:

- (1) The deceased's corpse was identified by her own father and the pathologist had confirmed this before she conducted the autopsy on the deceased. The post-mortem conducted by the pathologist on the deceased revealed that the deceased had died from excessive bleeding, caused by as single stab wound to the front of her neck. Further, based on the fact and evidence in totality, the prosecution had proven that the accused had intentionally stabbed the deceased's neck resulting her to

- A suffer a wound that would be sufficient to cause death in the ordinary cause of nature. On the maximum evaluation of all the evidence, the court was satisfied that the prosecution had adduced credible evidence to successfully prove a prima facie case against the accused (see paras 45–46 & 62–63).
- B (2) In evaluating expert witnesses, it was not a contest of who was the better expert. It was a question of whose findings or opinion was the preferred one. The primary function of an expert was to assist the court, given the expert's field of expertise that a judge may not possess. The prosecution witness expert, SP12 had conducted the post-mortem. She had the advantage of physically examining the deceased's corpse. The defence witness expert, SD2 on the other hand, had merely referred to SP12's report and the post-mortem photographs of deceased's corpse. There was a huge difference between making a finding based on an autopsy, compared to merely viewing photographs and a report. Similarly in present case, the findings of SP12 would be preferred. These findings support SP12's conclusion that deceased's wound was caused by another person (see paras 87–88 & 94–96).
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- E (3) There were simply no reasons to support the proposition that the deceased had killed herself by stabbing her neck with the knife. She was furthering her studies in UiTM, was loved by her family, and was also in a relationship with a fellow student studying in the same campus. None of the witnesses had ever provided any reasons or theory, to support the proposition that the deceased had reasons to kill herself. The cumulative effect of all the evidence led to an irresistible conclusion that it was the accused that had stabbed the deceased, causing her to suffer an injury which was sufficient in the ordinary cause of nature to cause death under s 300(c) of the Penal Code. The court found that the prosecution had proven its case beyond reasonable doubt against the accused and that the accused had failed to raise any reasonable doubt (see paras 97–99).
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[Bahasa Malaysia summary]

- H Nur Syuhada bt Johari ('si mati') berusia 20 tahun telah dijumpai berada dalam keadaan lemah di dalam sebuah kereta jenis Proton Perdana pada tengah hari di tengah-tengah Lebuhraya Utara–Selatan di km 228.2 di daerah Taping pada 2 Februari 2015. Si mati berlumuran darah dipercayai kesan tikaman di bahagian leher dan dilihat sukar untuk bernafas. Si mati kemudiannya meninggal dunia. Syarafi bin Abu ('tertuduh') telah didakwa atas tuduhan membunuh si mati di bawah s 302 Kanun Keseksaan ('Kanun'). Pihak pendakwaan bergantung pada bukti pakar iaitu pakar forensik perubatan, SP12, yang telah menjalankan bedah siasat pada si mati. SP12 telah merumuskan bahawa terdapat individu lain yang menyebabkan kecederaan pada si mati dan kesan tikaman ke atas si mati adalah berbeza sekiranya si mati sendiri yang mencuba untuk membunuh diri. Dalam pembelaan, si tertuduh
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mengatakan simati mengambil sebilah pisau dari sebuah kotak di dalam kereta. Si mati pada awalnya dikatakan cuba membunuh diri dan tertuduh mengatakan dia cuba merampas pisau daripada si mati namun tidak berhasil. Si mati kemudian telah menikam lehernya sendiri. Tertuduh bergantung pada bukti yang dikemukakan oleh SD2 iaitu seorang bekas konsultan kanan patologi forensik yang mengatakan kecederaan si mati adalah disebabkan tindakan si mati itu sendiri.

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Diputuskan, menjatuhkan sabitan dan hukuman mati pada tertuduh:

- (1) Mayat si mati telah dikenal pasti oleh ayah si mati sendiri dan ahli patologi yang mengesahkan mayat tersebut sebelum bedah siasat dilakukan. Hasil bedah siasat yang dijalankan oleh ahli patologi mendapati bahawa si mati meninggal dunia akibat daripada pendarahan yang berlebihan yang disebabkan oleh satu kesan tikaman pada leher si mati. Tambahan pula, berdasarkan fakta dan bukti secara keseluruhan, pihak pendakwaan telah berjaya membuktikan tertuduh mempunyai niat untuk menikam leher si mati yang secara semula jadi mampu menyebabkan kematian. Dalam menilai keseluruhan bukti yang dikemukakan, mahkamah berpuas hati bahawa pihak pendakwaan telah berjaya membuktikan kes prima facie terhadap tertuduh (lihat perenggan 45–46 & 62–63).
- (2) Dalam menilai bukti pakar, ianya bukan untuk menentukan bukti pakar mana yang baik. Ianya hanyalah penemuan dan pendapat mana yang lebih layak untuk diterima. Fungsi utama bukti pakar adalah untuk membantu mahkamah di mana hakim tidak mempunyai kepakaran dalam sesuatu perkara. Saksi pakar pihak pendakwaan, SP12 telah menjalankan bedah siasat. SP12 mempunyai kelebihan disebabkan telah terlibat menjalani proses bedah siasat mayat si mati. Manakala, saksi pakar pembelaan, SD2 hanya merujuk pada laporan SP12 dan juga gambar hasil bedah siasat yang dijalankan. Terdapat perbezaan yang ketara di antara bukti yang dijalankan secara bedah siasat dan bukti yang diperoleh hanya dengan melihat pada gambar-gambar dan laporan. Dalam kes ini, keterangan SP12 lebih layak untuk diterima di mana kecederaan yang dialami si mati adalah disebabkan oleh individu lain (lihat perenggan 87–88 & 94–96).
- (3) Tiada alasan yang boleh diterima untuk menyokong fakta yang mengatakan si mati cuba membunuh diri dengan menikam lehernya sendiri. Si mati sedang mengikuti pengajian di UiTM, disayangi keluarganya dan juga sedang menjalin hubungan dengan rakannya yang belajar di kampus yang sama. Tiada saksi yang memberi apa-apa sebab dan teori untuk menyokong dakwaan bahawa si mati cuba untuk membunuh dirinya sendiri. Keseluruhan kesan daripada keterangan telah menjurus kepada konklusi bahawa tertuduh yang menikam si mati

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- A dan menyebabkan si mati mengalami kecederaan yang secara semulajadi boleh menyebabkan kematian pada si mati di bawah s 300 Kanun. Mahkamah mendapati pihak pendakwaan telah berjaya membuktikan kes melampaui keraguan yang munasabah terhadap tertuduh dan tertuduh gagal untuk menimbulkan sebarang keraguan yang munasabah (lihat perenggan 97–99).]
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Notes

- For a case on conflicting expert evidence, see 7(2) *Mallal's Digest* (5th Ed, 2017 Reissue) para 1941.
- C For cases on murder, see 4(2) *Mallal's Digest* (5th Ed, 2015) paras 1911–1919.

Cases referred to

- Balachandran v PP* [2005] 2 MLJ 301, FC (refd)
- D *Dato' Seri Anwar bin Ibrahim v PP and another appeal* [2015] 2 MLJ 293, FC (refd)
- La Ode Ardi Rasila v PP* [2016] 1 MLJ 358; [2015] 10 CLJ 48, CA (refd)
- Mat v PP* [1963] MLJ 263 (refd)
- PP v Azilah bin Hadri & Anor* [2015] 1 MLJ 617; [2015] 1 CLJ 579, FC (refd)
- E *PP v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393, FC (refd)
- PP v Ramayah a/l Ramalu and another appeal* [2016] 5 MLJ 355, CA (refd)
- Tengku Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latiff bin Shah Mohd & Ors and other appeals* [1996] 2 MLJ 265, CA (refd)
- F *Virsa Singh v The State of Punjab* 1958 AIR 465; 1958 SCR 1495, SC (refd)
- Wong Swee Chin v PP* [1981] 1 MLJ 212, FC (refd)

Legislation referred to

- Criminal Procedure Code ss 173(f), (ha), 180, 180(1), (2), (3), (4), 182A
- G Evidence Act 1950 s 8
- Penal Code ss 300, 300(c), 302
- Yusaini Amer bin Abdul Karim (Mohd Amril bin Johari and Mohd Azrul Faiz bin Abdul Razak with him) (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.*
- H *Naran Singh (Muhammad Farhan bin Ahmad Fadzil with him) (Naran Singh & Co) for the accused.*

Mohamed Zaini Mazlan JC:

- I INTRODUCTION

[1] Twenty year old Nur Syuhada bt Johari ('Syuhada') was found slumped against a black Proton Perdana at around noon, in the middle of the North

South highway at km228.2 in the district of Taiping, on the 2 February 2015. She was bleeding profusely from a stab wound to her throat, and was barely alive then. She died from the wound soon after.

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[2] The accused, Syarafi bin Abu ('Syarafi'), was charged with the murder of Syuhada under s 302 of the Penal Code ('the PC'). The charge against him reads as follow:

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Bahawa kamu pada 2 Februari 2015 jam lebih kurang 11.55 pagi di KM 228.2 Leburaya Utara Selatan, di dalam Daerah Taiping, di dalam Negeri Perak Darul Ridzuan, telah membunuh Nur Syuhada Binti Johari (No KP: 950312-02-5274) dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

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[3] Syarafi pleaded not guilty and claimed trial. The prosecution called sixteen witnesses to prove its case.

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THE PROSECUTION'S CASE

[4] Sarah Husna bt Kamarul Bahrain ('SP7') was Syuhada's roommate at Universiti Teknologi Mara ('UiTM') in Permatang Pauh. They were also in the same course. On the fateful day, Syuhada had at around 10am woke SP7 up, and told her that Syarafi wanted to meet and return her laptop. He had asked Syuhada to meet him at the front gate of her hostel. SP7 knew of Syarafi from Syuhada. SP7 and another friend, Nabila, had advised Syuhada against it, but to no avail. To SP7's knowledge, Syuhada was in a relationship with someone who also studied in the same university.

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[5] Syuhada and SP7 then waited for Syarafi at the gate. Syarafi came in a black Proton Perdana car. Syuhada then went to the car, while SP7 watched from a short distance. Syuhada stood outside the car speaking to someone who was in the car for about fifteen minutes. She then signalled to SP7 to indicate that she was going into the car. SP7 then saw the car going off headed towards the highway.

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[6] SP7 was uneasy, and related the event to Nabila. They decided that Nabila should inform Syuhada's parents, which she did.

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[7] Johari bin Hashim ('SP8') was the late Syuhada's father. Syuhada was one of his six children. SP8 knew Syarafi, as his family lives in the same neighbourhood. He also knew Syarafi's parents. To SP8's knowledge, Syarafi and Syuhada were merely friends and nothing more. SP8 claimed that he had in the past warned Syarafi to stop disturbing Syuhada, and that Syarafi had relented. SP8 had also raised his displeasure with Syarafi's parents about six months before the incident. SP8 clearly did not think much of Syarafi.

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A [8] On the day of the incident, SP8 was at work when he received a call from his wife at around 11am. He was told that Syuhada's friend had called, and told her that Syarafi had taken Syuhada away. He then left for home to pick up his wife. He had also called Syarafi's mother while on the way home. SP8 told Syarafi's mother that he would not report to the police, but demanded that she instruct Syarafi to return his daughter. She agreed.

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C [9] SP8 then called Syarafi's mother again. He was told that Syarafi had not picked up her calls. SP8 subsequently received a call from Syarafi's father. He was told that Syuhada's life was in the balance. SP8 immediately went to the police headquarters in Alor Setar, and asked them to check whether there had been any report of a person stabbed on a highway. A check was made with the Taiping police. SP8 was told that there was indeed a report of a person stabbed, and that the victim was in a critical condition.

D [10] SP8 and his wife rushed over to the hospital in Kuala Kangsar. On the way there, SP8 received news that a parent would dread to hear. He was told that his daughter had died.

E [11] Corporal Norlia bt Osman ('SP1') was on duty at the operations room of the Taiping Police Headquarters on the 2 February 2015. She received a 999 call at 11.55am. She was informed that a woman had been stabbed at km228.2 Changkat Jering headed south. She then made a radio call for a patrol team to be sent there, and also informed the investigating officer.

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G [12] Corporal Yahya bin Karti ('SP4'), and his colleague, who was on duty in a patrol car, received instructions at around 12pm to go to the location. Upon arrival, SP4 saw a black Proton Perdana car static in the middle of road, and a woman bleeding from the neck lying next to the car. Syarafi was also there, sitting on the shoulder of the road. He arrested Syarafi, who he said, did not resist.

H [13] Md Ikbal bin Ahmad ('SP5'), lives in Taiping and works in Ipoh. He would ply the North South highway to get to work. On the day concerned, SP5 used the highway to get to work on his motorcycle. It was a hot day, and traffic was moderate. SP5 was cruising at a speed of 70–80km per hour. While on the way, SP5 came across a black Proton Perdana parked on the emergency lane of the highway at km228.2. The distance between the car and him then was about seventy to eighty meters.

I [14] He slowed down when overtaking the car. Syuhada was seated on the passenger's side, while Syarafi stood outside on the driver's side. He saw Syarafi dragging Syuhada out from the car by pulling her hair from behind. He could

see clearly as he was passing by the car and was about 2ft away. Syuhada, SP5 claimed, was screaming. SP5 thought they were having an argument. A

[15] SP5 slowed down and continued to observe by looking at the side mirror of his motorcycle. He saw Syarafi dragging Syuhada to the side of the road by going around the front of the car. SP5 had demonstrated in court Syuhada's hand movement when being dragged. He claimed that Syuhada had waved her hands frantically, while being dragged by the hair from behind by Syarafi. There was no one else at the scene. B

[16] SP5 had observed all these through his side mirror while on the move. He did not see what transpired after Syarafi had dragged Syuhada to the side as he was too far off. However, he noticed that the car had slowly reversed to the middle of the road, possibly due to the hand brake not being engaged. At this point in time SP5 stopped and returned back to the scene. He was about one hundred meters away from the car. C D

[17] While moving towards the car, at a distance of about thirty feet, SP5 saw Syarafi going over the guard rail. He then saw Syarafi going down the slope adjoining the highway. SP5 then parked his motorcycle and went over to the car. Syuhada was lying on the road next to the car. An elderly man was next to her and had covered her head with a cloth. SP5 claimed that Syuhada was bleeding but still breathing. The elderly man was giving Syuhada some water to drink, and telling her to recite some holy verses. A small crowd had already gathered by then. E F

[18] About forty minutes later, Syarafi came back. SP5 claimed that Syarafi had stepped over Syuhada, and took a mobile phone placed next to the handbrake in the car. SP5 claimed that Syarafi had uttered the following words: G

Tak mampus lagikah perempuan ini?

[19] Syarafi, according to SP5, claimed that Syuhada was his friend, when asked by some members of the public there. Syarafi then sat next to the guard rail and spoke on the phone. SP5 claimed that Syarafi said the following: H

Pak, pak saya minta maaf.

[20] According to SP5, some members of the public began to hit and kick Syarafi. SP5 told them to stop and let the police handle Syarafi. SP5 heard Syarafi claiming that Syuhada had slit herself. I

[21] Syarafi then attempted to climb over the guard rail, but was stopped by those who were there. He was then tied up with his own belt.

- A** [22] SP5 stayed on until the police arrived. An ambulance then came and took Syuhada away. SP5 heard Syarafi telling the police that Syuhada had thrown the knife down the slope next to the highway. SP5 then saw some police officers and members of the public scouring the area. The knife was eventually found.
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- C** [23] Haris bin Ismail ('SP9') worked for PLUS Malaysia Berhad, the toll expressway operator for the North South highway. SP9 was assigned to the team that patrolled the Changkat Jering–Ipoh section of the North South highway. SP9 and his colleague descended on the scene of the incident upon receiving information. SP9 saw the black Proton Perdana parked in the middle of the road. He also saw Syuhada lying at the side of the car.
- D** [24] SP9 had taken some photos, one of which was a photo of the knife at the place where it was found. He claimed that the knife was found down the slope next to the highway. No one had touched the knife before he had taken its photo. He had also taken several other photos of the scene, which showed the position of the black Proton Perdana with Syuhada at the side being attended to by some members of the public.
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- F** [25] Inspector Noraini bt Awang @ Ali ('SP10') was the assigned crime scene investigator. She arrived at the scene at about 3.30pm and had collected and marked the items deemed as evidence, one of which was the knife. SP10 had described the knife as a 'Rambo' type, with the words '9 regimental D'Assaultoparacaduisti ColMorschin' engraved on it. Although the knife had bloodstains on it, SP10 did not take any swabs of the bloodstains. It was the chemist's job, according to her.
- G** [26] Hazwani bt Hapiz ('SP13'), worked as a chemist in the Department of Chemistry Malaysia. She had attempted to obtain DNA samples of the bloodstains on the knife, but was unsuccessful, as due to the high temperature and humidity, bacteria had already degraded the blood.
- H** [27] The origin of the knife was answered by the testimony of Syarafi's older brother, Shahrul bin Abu ('SP14'). Syarafi had worked for him as a cook. Syarafi had asked for his permission to go back to his hometown in Kedah, and that he had allowed Syarafi to use his brother-in-law's car, which was the black Proton Perdana with the registration number BFA 5087 ('the car'). Syarafi had left at around 3am on the day of the incident. SP14 had identified the knife (exh P39A) found at the scene, and said that it belonged to him. He was certain, as the knife had his name engraved on it, and that he had used it when he served in Lebanon with the United Nations and Royal Medical Corps of the Royal Malaysian Army.
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[28] Dr Suaran Singh ('SP15'), a forensic psychiatrist with Hospital Bahagia Ulu Kinta in Tanjung Rambutan, had as instructed, examined Syarafi to determine his mental health. SP15 had prepared a report. In essence, Syarafi was certified to be of sound mind during the incident, and was also fit to stand trial.

A

[29] Dr Siti Zanariah bt Md Naziri ('SP12') was the forensic medical specialist attached to the Forensic Department of the Permaisuri Bainun Hospital in Ipoh. SP12 conducted the post-mortem on Syuhada on the same day that she died. Her findings revealed that Syuhada had a single stab wound to the front of her neck, which severed the carotid artery. The wound was 6cm deep. SP12 concluded that the stab wound was sufficient to have caused Syuhada death, as it had caused her to bleed excessively.

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[30] SP12 also concluded that another person had caused the wound, and that the stab pattern would have been different, had Syuhada attempted to kill herself. SP12 also noted that Syuhada had lacerations on her right elbow, and postulated that it was caused when Syuhada fell backwards on the road.

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[31] SP12 was shown the knife found at the scene. She testified that the knife is capable of causing the wound suffered by Syuhada. Under cross-examination, it was suggested to SP12 that the wound was self-inflicted, in that Syuhada had used the knife to kill herself, as there was only one wound. SP12 disagreed. SP12 stated that a person who committed suicide with a knife, would normally slash the neck or hand, and that there would be multiple wounds and not just one. SP12 went on to explain that the person committing suicide would stab himself superficially first, before making the final thrust.

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[32] Abdul Nasir bin Ibrahim ('SP11'), an Executive Manager of PLUS, was tasked with the management of the close circuit television cameras ('CCTV') installed on the highways managed by PLUS. According to SP11, each toll station has a static CCTV installed. The recording captured by each CCTV would be stored in the hard disc of each toll plaza for thirty days, after which it would be automatically deleted.

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[33] The investigating officer for this case, ASP Rahimi bin Abd Rahman ('SP16'), had asked SP11 for the recordings made by the CCTV at the Juru toll plaza on the 2 February 2015. SP11 had copied to a hard disc the recording captured for lane number 3 at the Juru toll plaza from the time 10:57:20am dated 2 February 2015. The recording was played in court during the trial.

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[34] SP11 had described the scene played in court. The recording showed a male driver with a female passenger seated at the front in a black Proton Perdana with the plate number BFA 5087. The car had entered a lane where the

- A ticket would be given manually. SP11 while viewing the recording described that the male driver was seen pulling the female passenger's hair while exiting the lane at 10:57:34am.
- B [35] SP16 had gone to the scene on the day concerned at around 1.15pm. The scene had already been secured by the Taiping police officers and PLUS personnel by the time he arrived. The PLUS personnel had already moved the car to the emergency lane, so as not to impede traffic. Syuhada had already been taken to the hospital. Syarafi too had been taken away to the Taiping police station. While SP16 was overseeing the work done by the police's forensic personnel, he was informed by the Kuala Kangsar hospital that Syuhada had passed away.
- C [36] SP16 had in his investigation, discovered that the car was registered in Syarafi's brother-in-law's name. He also discovered that the car had run out of fuel, which explained why it had stopped at km228.2. SP16 had also taken a cautioned statement from Syarafi (exh D48). Syarafi's counsel tendered this statement during the course of SP16's cross-examination.
- D [37] Syarafi had in his statement, claimed that he had a relationship with Syuhada, although it was disapproved by her parents. He had on the day concerned gone to meet Syuhada, as he heard that Syuhada was seeing someone else. Syuhada had agreed to follow him in the car, but things went awry when they got into an argument after Syuhada had called someone claiming that she was held against her will. Syarafi claimed that Syuhada wanted to jump out of the car, and that he decided to drive fast to avoid her from doing that.
- E [38] Syarafi also claimed that Syuhada had grabbed the knife in the car and threatened to kill herself, and that was when the car ran out of fuel. He then pulled Syuhada out, and told her to do it outside the car. He managed to wrest the knife away from Syuhada, and was shocked to see that she was bleeding. He admitted throwing the knife away, and that he had ran away in panic. He also admitted coming back to the car after regaining his composure, and that he had indeed uttered the words 'Tak mampus lagi ka', while taking his mobile phone from the car as it was ringing. In gist, Syarafi claimed that Syuhada had taken her own life.
- F [39] I had during the course of the trial, visited the site of the incident together with counsel for the prosecution and Syarafi. SP5 had also accompanied us. SP5 had shown the areas that he had described in his testimony, namely the spot where the car was situated, and the surrounding area, including the area where the knife was found. I must add, that visiting the
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scene of an incident should be greatly encouraged. It gives the trier of fact a 3-dimension appreciation of the scene, and a better appreciation of the evidence given during the trial.

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THE COURT'S DUTY AT THE END OF THE PROSECUTION'S CASE

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[40] It is the court's primary task to consider and decide, whether the prosecution has made out a prima facie case against the accused, at the end of the prosecution's case; ss 173(f) and 180(1) of the Criminal Procedure Code ('the CPC'). The prosecution bears the burden to establish that they have made out a prima facie case against the accused, before the accused can be called to enter his defence, failing which, the accused must be acquitted; s 180(2) and (3) of the CPC.

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[41] A prima facie case is made out when the prosecution has successfully adduced sufficient evidence, to prove each and every single ingredient of the offence alleged, which if not rebutted or unexplained, will result in conviction; s 180 of the CPC, *Balachandran v Public Prosecutor* [2005] 2 MLJ 301 (FC).

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[42] It is also obligatory for a trial court, to undertake a positive and maximum evaluation of the prosecution's evidence. This involves an assessment of the prosecution's witnesses, and the inferences drawn from the admission of the prosecution's evidences. If there are more than one inferences drawn, then the inference that is favourable to the accused must be preferred; *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393.

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FINDINGS OF THE PROSECUTION'S CASE

The elements of the charge

[43] The punishment for murder is death; s 302 of the PC. The relevant provision for murder is set out under s 300 of the Penal Code, which provides as follows:

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300 Murder

Except in the cases hereinafter excepted, culpable homicide is murder —

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- (a) if the act by which the death is caused is done with the intention of causing death;
- (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
- (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

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- A (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

B [44] The prosecution would need to establish the following elements:

- (a) the death of the victim;
- (b) that the victim's death was caused by the injuries sustained; and
- C (c) that the death was intentionally caused by the accused, and that the act by the accused in inflicting the injury on the deceased comes within the ambit of one or a combination of the limbs under s 300 of the PC.

I shall now analyse the prosecution's case.

D *The death of Syuhada*

- E [45] Syuhada's corpse was identified by her own father, SP8. The pathologist, SP12, confirmed this, before she conducted the autopsy on Syuhada. There are no disputes raised, and I find that this ingredient has been proven.

That the victim's death was caused by the injuries sustained

- F [46] The findings by the pathologist, SP12, who had conducted the post-mortem on Syuhada, revealed that Syuhada had died from excessive bleeding, caused by a single stab wound to the front of her neck. The stab, which was six centimetres deep, had severed the carotid artery on the right side of her neck. SP12 surmised that the stab wound was caused by a sharp and flat object.
- G It is my finding that the prosecution has also proven this second ingredient.

That the death was intentionally caused by the act of the accused which comes within the ambit of s 300 of the PC

- H [47] From the evidence led by the prosecution, their case is premised on an offence under s 300(c) of the PC. The much often cited authority on this particular section is the Indian case of *Virsa Singh v The State of Punjab* 1958 AIR 465; 1958 SCR 1495, which has been frequently cited by our courts. The
- I judgment is most illuminating, which is as follows:

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved. These are purely objective investigations;

- Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. A
- Once these three elements are proved to be present, the enquiry proceeds further and, B
- Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. C
- Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under s 300 'thirdly'. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional. (at p 467.) D
- [48] It is the prosecution's case that Syarafi had murdered Syuhada, which is of course denied by Syarafi. There are no eye-witnesses that saw Syarafi murdering Syuhada. The prosecution's case rests on circumstantial evidence. E
- [49] The Federal Court in *Public Prosecutor v Azilah bin Hadri & Anor* [2015] 1 MLJ 617; [2015] 1 CLJ 579, held that there is no distinction between circumstantial and direct evidence, and that circumstantial evidence alone may be sufficient for a conviction, provided that: F
- (a) the circumstances from which the conclusion of guilt is to be drawn has been established; G
 - (b) the established facts is consistent with the hypothesis of guilt; and H
 - (c) the circumstances must be conclusive and the chain of evidence complete so that it excludes any conclusion of the accused's innocence. I
- [50] The prosecution referred to several factors, one of which was the fact that Syarafi was the last person seen with Syuhada before she suffered the injury that led to her death. On the day concerned, Syuhada had told her roommate, SP7, that Syarafi had called and wanted to meet her. Syuhada then came down

- A** from her hostel to meet someone who came in the car. She then got into the car, which then went towards the highway. SP7 then got her friend Nabila to inform Syuhada's father, SP8. After a series of telephone calls to among others Syarafi's mother, SP8 was informed of the unfortunate news pertaining to Syuhada. He was informed that Syuhada had been stabbed in an incident on the highway.
- B**

- C** [51] The car that Syarafi used, belonged to SP14's brother-in-law. This very same car was recorded going through the Juru toll plaza at 10:57:20am as evidenced by the CCTV recordings tendered through SP11.

- D** [52] SP5 who lives in Taiping, was on his way to Ipoh for work on that day. He was on his motorcycle using the North–South highway, when he came across the car at km228.2. The car was in the middle of the road, as it had run out of fuel as testified by SP16. What SP5 saw then was crucial. He saw Syuhada, who was seated at the front passenger seat, being dragged out by Syarafi who stood outside the car on the driver's side. Syarafi had dragged Syuhada out by pulling her hair. She was screaming and frantically waving her hands. She had fell down on her back and was being dragged by Syarafi to the left side of the car. SP7 then turned around to get to the car. He then saw Syarafi crossing over the guard rail and went down the slope adjacent to the highway. SP5 then went over to Syuhada who was slumped on the left side of the car. She was bleeding profusely from the neck. SP5 did not see what had caused Syuhada to bleed. Syarafi then came back to the scene about forty minutes later.
- E**
- F** He took a look at Syuhada and exclaimed 'Tak mampus lagikah perempuan ini?', while stepping over her to retrieve a mobile phone in the car. He then attempted to go down the slope next to the highway, but was stopped by the members of the public, who had descended upon the scene.

- G** [53] Based on the evidence, it is clear that Syarafi was the last person with Syuhada. The events related by the prosecution's witnesses show that Syarafi had picked Syuhada up from her hostel with the car. He then drove to the North–South highway headed south, passing through the Juru toll plaza. The female seen seated next to the male driver in the CCTV recording, although
- H** not identified through any of the witnesses, could only be Syuhada. The car that both Syarafi and Syuhada were in then came to a stop at km228.2 as it had ran out of fuel.

- I** [54] What SP5 saw was crucial. Syuhada was clearly in a state of despair, as she was dragged out of the car by the hair, while screaming and waving her hands frantically. The lacerations on Syuhada's elbow as testified by SP12, supports SP5's contention that she was dragged to the ground on her back from behind. In that moment when she was dragged out to the left side of the car, SP5 did not see what had happened. However, SP5 who had immediately

turned back to the car, saw that Syuhada was bleeding profusely from the neck. The fact that Syarafi was the only one there and had acted violently against Syuhada, points irresistibly to only one conclusion: that he was the only one that could have stabbed Syuhada in the throat using the knife that belonged to his brother.

A

B

[55] Syarafi's act when he came back to the scene is most damning. To have uttered the chilling words of 'Tak mampus lagikah perempuan ini?' could only mean that he had felt no remorse or compassion towards Syuhada. SP5 had also heard Syarafi talking on his mobile phones saying 'Pak, pak saya minta maaf'. His remorsefulness could only be due to what he had done to Syuhada.

C

[56] If Syarafi's statement to the police is to be believed, in that Syuhada had stabbed herself, then it would have only been reasonable to expect Syarafi to at the very least attend to her. He could have called for assistance by calling for medical aid, or stopped anyone driving past. He did none of these. Instead, he fled and came back later merely to retrieve his mobile phone. These are relevant conducts to take into consideration under s 8 of the Evidence Act 1950.

D

[57] I also accept SP12's testimony, that the wound could have only been caused by another person, in that the stab pattern would have been different, had Syuhada attempted to kill herself. I also find that the wound inflicted on Syuhada goes to show that Syarafi had every intention to cause death. To thrust a knife into the throat, which is a vulnerable part, causing a wound 6cm deep, could only mean that Syarafi had inflicted the wound intentionally, and that it was inflicted with the intention of causing bodily injury on Syuhada.

E

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[58] Abdul Rahman Sebli JCA, who delivered judgment for the Court of Appeal in *La Ode Ardi Rasila v Public Prosecutor* [2016] 1 MLJ 358; [2015] 10 CLJ 48 (CA) had this to say:

G

A man who intentionally shoots another at a vital part of his body must be presumed to intend his death unless he could prove that his act fell under any of the general exceptions in the Penal Code.

H

[59] As for the injury suffered by Syuhada, I find that the injury was sufficient in the ordinary course of nature, to cause death under s 300(c) of the PC based on SP12's testimony. It is immaterial whether Syarafi knew that the injury suffered by Syuhada, carried a high possibility of causing death to her. It is also immaterial whether Syarafi intended to cause death to satisfy the provisions of s 300(c) of the PC; *Public Prosecutor v Ramayah all Ramalu and another appeal* [2016] 5 MLJ 355 (CA).

I

A [60] The knife found on the slope adjacent to the highway that belonged to Syarafi's brother was most likely the weapon used to stab Syuhada, as SP12 had testified that the knife could cause the wound suffered. The fact that it was thrown away could only mean that Syarafi had attempted to dispose of it.

B [61] I therefore find Syarafi's statement that Syuhada had killed herself devoid of merits. There were no compelling reasons for her to have killed herself. The evidence led thus far lends no credence to this assertion at all.

C [62] I find that based on the facts and evidence in totality, the prosecution has proven that Syarafi had intentionally stabbed Syuhada's neck, resulting her to suffer a wound that would be sufficient to cause death in the ordinary cause of nature.

D CONCLUSION AT THE END OF THE PROSECUTION'S CASE

E [63] Having considered all the evidence and subjecting them to maximum evaluation, I am satisfied that the prosecution has adduced credible evidence to successfully prove a prima facie case against Syarafi, as envisaged under s 180(4) of the CPC.

F [64] I therefore called upon Syarafi to enter his defence. Pursuant to the provisions of s 173(ha) of the CPC, the three options available were explained to him. Syarafi elected to give evidence on oath.

F THE DEFENCE'S CASE

G [65] Syarafi claimed to have been in a relationship with Syuhada for the past four years. It was a clandestine relationship, as he claimed that Syuhada's parents, who did not approve of him, had no inkling of their relationship.

H [66] He admitted driving the car on the day concerned, and that he had picked Syuhada up at her hostel using the car. He had called up Syuhada prior to going over to her hostel, to let her know that he wanted to meet and return her laptop. Upon meeting Syuhada at her hostel, he then asked her out for a spin. Syuhada agreed, and went into the car willingly.

I [67] Things however turned sour when Syuhada called someone on her mobile phone, and claimed that Syarafi had taken her against her will. That led to an argument. Syarafi claimed that Syuhada then attempted to jump out of the car, and that he had drove fast to avoid her from attempting it again.

[68] Syarafi claimed that Syuhada then took out a knife from a box in the car, and attempted to kill herself. Syarafi tried to stop her, and that it was at this

point in time that the car had run out of fuel and stopped. Syarafi then dragged her out by her hand through the driver's side, as the door on the passenger's side was blocked by the guard rail on the highway. Syarafi then dared Syuhada to kill herself outside the car, but at the same time attempted to grab the knife off her.

A

[69] Syarafi claimed to have wrested the knife from Syuhada, but that he was too late, as Syuhada had managed to stab her own throat. Syarafi then threw the knife down the slope next to the highway for her own safety. Syuhada who was by then bleeding profusely from her neck, walked over to the side of the car and collapsed. Syarafi claimed that he panicked and ran off towards the jungle off the highway. He was afraid that he would be implicated.

B

C

[70] Syarafi later realised that he had done nothing wrong and decided to go back. Upon reaching the car, Syarafi saw that a crowd had gathered. He admitted uttering the words 'Tak mampus lagi ka' and that his mobile phone had at the same time rang. He also admitted crossing over Syuhada when attempting to take his mobile phone in the car. He reiterated that he loved Syuhada, and that he had to cross over her merely to get his mobile phone.

D

[71] The call on his mobile phone was from his brother. He told his brother what had happened, and had apologised as he was afraid that he would be arrested by the police. The crowd who had gathered there then started to beat him up and that he had kept telling them that Syuhada had killed herself. He had after being arrested, gave his statement to the police (exh D48).

E

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[72] The second witness called for the defence was Dato' Dr Bhupinder Singh a/l Jeswant Singh ('SD2'). SD2's last posting was at the Penang General Hospital, where he had served as a Senior Consultant Forensic Pathologist. He had been in service for 37 years. He retired in October 2016. SD2's credentials are impressive, judging from his curriculum vitae alone.

G

[73] SD2 had perused the post-mortem results and photographs of Syuhada. He opined that the common parts of a body that a person committing suicide would injure are the neck, wrist and chest area. His opinion however, was diametrical to that of SP12. In his opinion, Syuhada's wound was self inflicted. SD2 however concurred with SP12's view that a suicide victim would normally inflict superficial wounds on the side of the neck before going for the fatal thrust, as the victim contemplating suicide, would have time to firstly contemplate whether to commit suicide or otherwise. In Syuhada's case however, SD2 opined that Syuhada had probably stabbed herself at the spur of the moment, and that she had no time to think. According to SD2, most victims in murder cases would have multiple wounds on the sides of the neck, and that it is rare to find a murder victim with a stab wound on the frontal part of the neck.

H

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- A** [74] SD2 concurred with SP12 that the knife found at the scene (exh P39A) would have caused the wound suffered by Syuhada. He also testified that the pattern of the wound, also shows that the knife had been thrust into Syuhada's neck until its hilt. SD2 opined that a person who holds a knife and stabbing himself, would move the knife inwards and laterally. In Syuhada's case, he was of the view that there was a struggle before Syuhada had thrust the knife into herself, and that someone else had attempted to block her. That resulted in the knife being thrust with great force until its hilt. SD2 concluded by stating that the direction of the wound suggested that it was directed medially, inwards and laterally, indicating that it was a self-inflicted wound. According to SD2, the injury would have been a slit-like wound in murder cases.

DUTY OF THE COURT AT THE END OF THE CONCLUSION OF THE TRIAL

- D** [75] It is sacrosanct that an accused is presumed innocent until proven guilty. The burden to prove an accused's guilt lies on the prosecution throughout the trial. An accused merely has to cast a reasonable doubt to gain an acquittal. The procedure for the court at the end of the trial is set out under s 182A of the CPC, which provides as follows:

182A Procedure at the conclusion of the trial

- E** (1) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.
- F** (2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.
- G** (3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal.

[76] The Federal Court in *PP v Mohd Radzi Abu Bakar*, stated that the following steps set out in *Mat v Public Prosecutor* [1963] MLJ 263 should be followed at the end of the defence's case:

H I	(a)	If you are satisfied beyond reasonable doubt as to the accused's guilt.	Convict
	(b)	If you accept or believe the accused's explanation.	Acquit
	(c)	If you do not accept or believe the accused's explanation.	Do not convict but consider the next steps below.
	(d)	If you do not accept or believe the accused's explanation and that explanation does not raise in your mind a reasonable doubt as to his guilt.	Convict

(e)	If you do not accept or believe the accused's explanation but nevertheless it raises in your mind a reasonable doubt as to his guilt.	Acquit
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A

ANALYSIS OF THE DEFENCE

B

[77] There are several aspects of this case that are undisputed. It is not disputed that Syarafi had picked up Syuhada from the her hostel at UiTM in the car, and that they both travelled down south on the North South highway passing through the Juru toll plaza. There is no evidence to suggest that Syuhada was forced to enter the car against her will, although whether she had consented to continuing being in the car after they had left UiTM is an issue. The fact that Syuhada's parents were against Syarafi having any contact with Syuhada is also undeniable. It is also undisputed that the car had ran out of fuel and stopped at km228.2 of the North South highway. That Syuhada had died, and that the wound in her neck was caused by the knife are also undisputed. The pertinent issue here is whether Syuhada's death was caused by Syarafi or whether it was self inflicted.

C

D

[78] During the prosecution's case, it was suggested to SP11 that Syuhada was sleeping, and that she had rested her head on Syarafi's shoulder when they passed through the Juru toll plaza. When the CCTV recording at the Juru toll plaza was played during Syarafi's cross-examination, Syarafi, in response to the learned deputy public prosecutor's question, gave a different version. He claimed that Syuhada was leaning over to find something in the car. He denied that Syuhada had rested her head on his shoulder to sleep.

E

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[79] I have viewed the CCTV recording intently. It did not seem that Syuhada was either resting her head on Syarafi's shoulder to sleep, or that she was in the midst of looking for something in the car. It seemed very clear to me that Syuhada looked distressed. I am inclined to agree with the prosecution's suggestion, that Syarafi had pulled Syuhada's hair to prevent her from escaping. The angle of Syuhada's body towards Syarafi, and the look on her face suggest that Syuhada was in a state of distress at that point in time. I am of the view that Syuhada was at that point in time held against her will.

G

H

[80] The crucial issue now is what actually transpired after the car had ran out of fuel and stopped at km228.2 of the North South highway. Syarafi contended that they had an argument prior to that, as Syuhada had called up a friend claiming that she was held against her will. Syarafi then claimed that Syuhada had attempted to jump out of the car, and that he then drove fast to avoid her from jumping out. He then claimed that Syuhada took out a knife that was in the car and attempted to kill herself.

I

- A** [81] Many of these do not make sense. If Syuhada had indeed attempted to jump out of the car, the reasonable thing to do was to stop the car at the side of the highway, and attempt to resolve the issue with her, instead of driving faster. Syarafi then claimed that Syuhada then attempted to kill herself with the knife in the car. This does not make sense either. If Syuhada had indeed called and
- B** informed her friend that Syarafi had held her against her will, why would she then attempt to kill herself? A woman in distress being held against her will, would in all likelihood use a weapon, such as the knife, to protect herself, or use it against the aggressor.
- C** [82] Now what transpired after the car came to a stop at km228.2 is the crucial issue here. Syarafi claimed that he had pulled Syuhada out of the car, and dared her to kill herself outside the car. He also claimed that he had at the same time attempted to wrest away the knife from Syuhada. This is a
- D** contradiction. Why would Syarafi attempt to wrest away the knife, when he had firstly pulled Syuhada out and dared her to kill herself? If the knife was indeed in Syuhada's hand, a reasonable person would firstly attempt to wrest away the knife from her inside the car itself, or at least try to talk her out of it.
- E** [83] I am also more inclined to accept the testimony of SP5. There was no reason for him to concoct a tale to implicate Syarafi. He was merely a passer-by on the way to work. He was the only eye witness that saw what had transpired after the car had come to a stop. SP5 was able to describe in great detail of what he had seen. SP5's view when he rode past the car was unobstructed. He saw
- F** Syarafi dragging Syuhada out of the car by her hair from behind. The laceration on Syuhada's elbow supports this fact, as it was most likely caused by her elbow grazing the road. SP5 saw Syuhada's hands flailing when she was dragged out. This meant that Syuhada did not have the knife in her hand, contrary to what Syarafi had claimed.
- G**
- H** [84] SP5 admitted that he did not see what had caused Syuhada to bleed from her neck when he had turned around and approach the car. Nevertheless, there was no one else next to Syuhada at that material time except for Syarafi. The crucial issue here is whether Syuhada had killed herself by thrusting the knife into her throat, or whether it was Syarafi who had thrust the knife into Syuhada's throat.
- I** [85] SP12, the pathologist that conducted the post-mortem on Syuhada, came to the conclusion that her wound was caused by another person based on the pattern of the wound. Her findings were of course challenged by the defence counsel, who suggested that the wound was self-inflicted. SP12 had also stated that a person committing suicide with a knife would normally slit her throat or hand, and that there would be multiple incisions, and not only

one, like in Syuhada's case. SP12 also testified that a person committing suicide would normally have superficial or 'testing' wounds, as she would firstly 'test' the area concerned.

A

[86] SP12's findings were in direct contrast to that of the defence's expert witness, SD2, who was adamant that Syuhada had killed herself. Unlike SP12 however, SD2 did not have the opportunity to conduct the post-mortem on Syuhada. SD2 was nevertheless certain of his opinion based on his many years of experience, even though he had only viewed the post-mortem photographs and SP12's report. Although SD2 had frowned upon SP12's use of the phrase 'testing' wounds, he nevertheless agreed that a person committing suicide would have what he phrased as 'tentative wounds'. The relevant part of SD2's examination-in-chief is reproduced below:

B

C

6. S: In this particular case also, the pathologist who conducted the post-mortem has given evidence to this effect, she has said this: 'Before a victim stabbed herself, she would inflict superficial or testing wounds'. First of all, is there such thing as testing wound in medical term?

D

J: This is the first time I am hearing of the word testing wounds. Normally we use the terminology as tentative wounds. As I was saying earlier, they would like to attempt and give very superficial wounds on the side of the neck and then they would go on for the final slit of the throat.

E

S: The scenario given by the pathologist is that the victim would first inflict superficial wounds and then inflict the stab wound. This is what she said. Do you agree that this situation would only apply where the victim is alone, example in a room, or somewhere all alone, and there is nobody around, only then the victim would inflict to themselves superficial or tentative wounds and when not successful, only then he or she may go for the fatal stabs. Do you agree with me?

F

J: Yes. It is possible that the person sitting alone as I mentioned earlier will contemplate as to whether he or she would want to commit suicide, and have these tentative wounds before stabbing herself or himself.

G

[87] SP12 and SD2 are both experts, although the latter undoubtedly possesses more experience than the latter, at least by virtue of the number of years that he was in service. In evaluating expert witnesses, it is not a contest of who is the better expert. It is a question of whose findings or opinion is the preferred one. The Court of Appeal in *Tengku Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latiff bin Shah Mohd & Ors and other appeals* [1996] 2 MLJ 265 at p 322, held that a trial judge has the discretion to prefer the opinion of one expert over the other where their opinions differ.

H

I

[88] The primary function of an expert is to assist the court, given the expert's field of expertise that a judge may not possess. Nevertheless, it is the sacrosanct role of a judge to make the finding of fact. In *Wong Swee Chin v*

A *Public Prosecutor* [1981] 1 MLJ 212, Raja Azlan Shah CJ (as His Highness then was) who delivered judgment for the Federal Court elucidated this function as follows:

B Our system of jurisprudence does not generally speaking, remit the determination of dispute to experts. Some questions are left to the robust good sense of a jury. Others are resolved by the conventional wisdom of a judge sitting alone. In the course of elucidating disputed questions, aids in the form of expert opinions are in appropriate cases placed before juries or judges. But, except on purely scientific issues, expert evidence is to be used by the court for the purpose of assisting rather than compelling the formulation of the ultimate judgments. In the ultimate analysis it is the tribunal of fact, whether it be a judge or jury, which is required to weigh all the evidence and determine the probabilities. It cannot transfer this task to the expert witness, the court must come to its own opinion. (at p 214.)

D It would in my opinion, be more prudent to analyse the facts exhaustively without solely relying on the findings of SP12 or SD2.

E [89] Syarafi claimed that he was in a relationship with Syuhada, albeit he readily admitted that it was one that was not approved by the parents. Nevertheless, he maintained that he loved and cared deeply for Syuhada. If that was indeed the case, and if one were to believe his testimony that he had attempted to stop Syuhada from killing herself, then why did he run away? A person who loved another would firstly do his best to firstly talk the other person from committing suicide. He would never dare her to kill herself, which was the case here with Syarafi, who even dragged Syuhada out of the car daring her to do it outside the car.

G [90] If indeed Syuhada had stabbed herself in the throat, why then did Syarafi run away immediately? He claimed to have panicked, but running away in panic can only connote guilt in these circumstances. If he had indeed cared for her, he should have then immediately gone to her aid. Syarafi could have stopped someone and asked for help, or call for an ambulance. After all, his mobile phone was in the car. Instead, Syarafi ran away leaving Syuhada bleeding profusely.

H [91] Although Syarafi had came back claiming that he had suddenly realised that he was not at fault, and that he wanted to have a look at Syuhada, his behaviour tells the opposite. Firstly, he did not attend to Syuhada, who was barely alive and still bleeding. Instead, he chose to answer his mobile phone, which was ringing. He even had the audacity to proclaim 'Tak mampus lagi ka' when he looked at Syuhada. This is not the behaviour of one who proclaimed love for Syuhada, and one who claimed that he did not inflict the wound on her. Conversely, it is the behaviour of a ruthless man who had imposed his will on a victim.

[92] Although Syuhada may have willingly followed Syarafi initially, that willingness had ceased sometime during the journey. The CCTV recording at the Juru toll plaza showed her in distress held against her will. The fact that Syarafi drove fast, could only mean that he did not want her to try and escape. The fact that he was seen by SP5 pulling Syuhada's hair and dragging her out from the right side of the car when she was seated on the left side, is evident of a wicked man who had every intention to harm Syuhada. The abrasions on Syuhada's elbow supports the fact that she had fell down on the road when being dragged by Syarafi.

A

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[93] The fact that the knife belongs to Syarafi's brother and was in a box in the car as he claimed, meant that only he knew that the knife was there, and had used the knife to stab Syuhada when they were outside the car. Syarafi had also admitted throwing the knife away, that was eventually found on the slope adjoining the highway. Although Syarafi claimed to have thrown away the knife to protect Syuhada from further injuring herself, I find that it is more probable that Syarafi had thrown the knife away in order to dispose of the murder weapon, a common act done by those who are guilty of the crime.

C

D

[94] I would prefer to accept the findings of SP12 as opposed to SD2. SP12 had conducted the post-mortem. She had the advantage of physically examining Syuhada's corpse. SD2 on the other hand, had merely referred to SP12's report and the post-mortem photographs of Syuhada's corpse. There is a huge difference between making a finding based on an autopsy, compared to merely viewing photographs and a report. With the former, SP12 was able to dissect and visually inspect Syuhada's corpse, an essential requirement for a pathologist to conduct a post-mortem. With the greatest of respect to SD2, I do not think that his wealth of experience can compensate the fact that he did not conduct the autopsy on Syuhada unlike SP12. There is a big difference between an analysis done physically and visually. When it comes to the human anatomy, I have no doubt that the findings based on the former is to be preferred over the latter.

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[95] The Federal Court in *Dato' Seri Anwar bin Ibrahim v Public Prosecutor and another appeal* [2015] 2 MLJ 293 (FC) concurred with the Court of Appeal which overruled the High Court's findings pertaining to the expert witnesses of the prosecution and defence. The High Court had held that the findings of the two expert witnesses of the defence had cast a reasonable doubt on the prosecution's case. The Court of Appeal disagreed. The Federal Court in agreeing with the Court of Appeal, held that the appellate court was right in rejecting the evidence of the two expert witnesses for the defence, as they had not done any test on the samples, but had merely interpreted and made observations of the prosecution's two expert witnesses findings, who as opposed to them, had personally carried out the DNA analysis on the samples.

H

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A [96] Similarly in this case, I would prefer the findings of SP12. In any event, my preference on SP12's findings is also based on the findings of fact that I had set out in the preceding paragraphs. These findings support SP12's conclusion that Syuhada's wound was caused by another person.

B [97] Furthermore, there are simply no reasons to support the proposition that Syuhada had killed herself by stabbing her neck with the knife. She was furthering her studies in UiTM, was loved by her family, and was also in a relationship with a fellow student studying in the same campus. None of the witnesses had ever provided any reasons or theory, to support the proposition that Syuhada had reasons to kill herself.

C [98] In fact, if Syuhada was really inclined to take her life, she could have easily jumped out of the car when Syarafi drove at high speed. If she had known of the knife in the car, she could have easily attempted to kill herself before the car came to a stop when it had run out of fuel. I therefore reject the defence's proposition that Syuhada's death was her own doing.

CONCLUSION

E [99] In this case, the cumulative effect of all the evidence leads to an irresistible conclusion that it was Syarafi who had stabbed Syuhada, causing her to suffer an injury which was sufficient in the ordinary cause of nature to cause death under s 300(c) of the PC. It is this court's finding, that the prosecution has proven its case beyond reasonable doubt against Syarafi, and that he has failed to raise any reasonable doubt.

F [100] I therefore find Syarafi guilty for the murder of Syuhada under s 302 of the PC, and sentenced him to death by hanging.

G *Accused convicted and sentenced to death.*

Reported by Mohd Kamarul Anwar

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